
Government of the District of Columbia



**Office of the Deputy Mayor for
Public Safety and Justice**

Testimony of
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***Public Hearing on
“Domestic Violence in the District of Columbia”***

Committee on the Judiciary
The Honorable Phil Mendelson, Chair
Council of the District of Columbia

December 8, 2005

Room 412
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004
11:00 A.M.

Good morning Chairperson Mendelson and members of the Committee. I am Edward Reiskin, Deputy Mayor for Public Safety and Justice. I appreciate this opportunity today to speak to the very important issue of domestic violence and to support means of ameliorating some of its adverse impacts, or better, of preventing it. I applaud the Council's leadership on this issue, especially that of Councilmember Brown, who has not only raised this issue to a more appropriately prominent place on the public radar screen, but also taken tangible steps to advance the issue. The proposed pieces of legislation before the committee today represent some of these tangible steps, and I will address each in turn.

The *Temporary Protection Order Expiration Amendment Act of 2005* will close a small but significant gap in the TPO process. Protection orders are an important vehicle through which the courts can help keep victims of domestic violence safe. Unfortunately, it is not uncommon for a victim of domestic violence to require extension of a temporary protection order to provide for his or her immediate safety. Currently, if an order expires at a time when the courts are not available to provide an extension – e.g., when they are closed – an at-risk victim goes without protection until the next business day. Clearly the safety of an individual should not be subject to the schedule of administrative function.

The proposed bill will fix this problem and will clarify legal status in cases where court closures are unplanned. According to the Office of the Attorney General, each day the court is closed, thirty or so cases of expiring orders are left unaddressed. We should not leave vulnerable individuals in this uncertain status. We fully support passage of this bill.

The *Child Custody Domestic Violence Amendment Act of 2005* seeks to ensure that application of our laws by judges does not place children in an unsafe position as part of addressing a domestic violence situation. It does so by creating a presumption that the parent that is the aggressor is not the more suitable custodian.

The Council has previously recognized that abusers are often problematic parents¹ and therefore codified legal protections for children of abusers. First, in 1994, the Council enacted the following language:

[I]f the judicial officer finds by a preponderance of evidence that a contestant for custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. In determining visitation arrangements, if the judicial officer finds that an intrafamily offense has occurred, the judicial officer shall only award visitation if the judicial officer finds that the child and custodial parent can be adequately protected from harm inflicted by the other party. The party found to

¹ See LUNDY BANCROFT & JAY G. SILVERMAN, THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS (2002); Peter Jaffe et al., *Common Misconceptions in Addressing Domestic Violence In Child Custody Disputes*, 54 JUV. & FAM. CT. J. 57 (2003).

have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development. D.C. Code §§ 16-914(a-1), 16-1005(c-1); D.C. Law 10-154, §§ 2(b), 2(c), 41 DCR 4870 (1994).

This law codified the Council's clear intention against awarding custody to abusers and focusing any evaluation of visitation on protecting the child.

In 1996, the Council codified additional protection by enacting part of the language that will be modified by this change. The law states,

"There shall be a rebuttable presumption that joint custody is not in the best interest of the child or children if a judicial officer finds by a preponderance of the evidence that an intrafamily offense as defined in D.C. Code section 16-1001(5), an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Code § 4-1301.02), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children's Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; D.C. Code § 4-1341.01), or where parental kidnapping as defined in D.C. Code section 16-1021 through section 16-1026 has occurred." D.C. Code 16-914(a)(2); D.C. Law 11-112, § 2(b), 43 DCR 574 (1996).

This language, included as part of the Joint Custody of Children Act of 1996, was critical to carving out an exception to the law's new presumption in favor of joint custody in all other cases. Coupled with the law passed in 1994, this law was understood to establish a legal preference for awarding sole custody of children to the victim of domestic abuse with visitation to the abuser granted in such a way to keep the victim and children safe.

Unfortunately, nearly ten years later, the Council's original intent seems to be fading and the structure of the language in the existing law does not unambiguously reflect the intent that the presumption be in favor of the domestic violence victim, instead stating simply a presumption against joint custody. Neither has there been a single D.C. Court of Appeals decision on the issue in the ensuing ten years to provide guidance on the appropriate interpretation of the ambiguous language. Accordingly, absent legislative clarification that the presumption favors awarding sole custody to the domestic violence victim, attempts have been made to apply the law in a way antithetical to its purpose of protecting victims and their children by allowing for the frightening proposition of awarding sole custody to an abuser.

In clarifying the language, however, we urge great caution in inadvertently creating negative, unintended consequences for victims and their children. Accordingly, the Office of the Attorney General and eight other domestic violence service providers have convened a working group to draft alternate language to propose to the Council for consideration. That effort is happening on an accelerated basis.

The bill also must be corrected to make clear that the modifications apply only to cases involving intrafamily offenses. As written they also apply to child abuse, child neglect, and parental kidnapping situations. The purpose of the bill, however, is clearly aimed at protecting victims of intrafamily offenses and their children, and not trying to change the other categories. We fully support changes to support those protections but do not support changes to the language affecting child abuse and neglect cases in this context. In sum, we support the concept underlying this proposed legislation and are working to develop language that more effectively and precisely meets its intent.

The *Domestic Violence Victim Confidentiality Protection Act of 2005* aims to protect confidential communications between victims of domestic violence and the service providers that assist them. We support the goal of providing protections that will facilitate better service provision, such as protections we provide for mental health and sexual abuse counselors. In letters to the Committee, the Office of the Attorney General and the Office of the United States Attorney have expressed concerns that the protections as proposed in the legislation, while a legitimate need, are too broad. As with the custody bill, we stand ready to work with the Committee and other stakeholders on focusing the language in support of this concept.

The *Sense of the Council in Favor of Enforcement of Protection Orders for Victims of Domestic Violence in the District of Columbia* is a nonbinding resolution aimed at ensuring adequate resources for those in need. As the resolution is nonbinding and has unclear implications, I will not comment on it specifically other than to say that we certainly support the adequate provision and enforcement of protection orders. We are happy to work with the Council and the courts to improve any aspect of this process.

Before closing, I want to take this opportunity to inform the Committee and the public of a federal grant program under the US Department of Justice's Office on Violence Against Women. The District applied for and has been awarded funds on behalf of one of our service provider organizations under the *Grants to Encourage Arrest and Enforcement of Protection Orders* program. This grant will support services at the Domestic Violence Intake Center, assist victims in identifying their economic and social service needs, and provide training to judges and police officers. While these are modest steps, they will contribute to much of the good work that is being done to serve victims of domestic violence.

In closing, thank you for the opportunity to appear before the committee today. I am available for any questions that you may have.